

REMARKS/ARGUMENTS

Claims 1, 4-10, 17-18, 35-38, and 40-92 have been canceled without prejudice or disclaimer. Claims 19-34 and 39 have been added. Claims 19-34 and 39 are now pending.

No new matter has been inserted. Claims 19-34 and 39 were simply amended to clarify that they are drawn to "isolated" mutant toxins. Claim 34 has also been clarified by inserting the term "specifically named."

Applicants acknowledge and appreciate that the Examiner has withdrawn the enablement rejection as applied to all of the pending claims.

Petition for Extension of Time

It is noted that a three-month petition for extension of time is necessary to provide for the timeliness of the response. A request for such an extension is made extending the time for response from September 3, 2003 to December 3, 2003.

35 U.S.C. § 112, first paragraph

Claims 1, 4-10, and 17-42 were rejected under 35 U.S.C. § 112, first paragraph, based on the written description requirement. Applicants respectfully traverse this rejection.

Specifically, the Examiner alleged that the written description is not commensurate in scope with the full breadth of the claims. The Examiner further stated that the claims were drawn to polypeptides with at least 97.5% identity to SEQ ID NO: 2. While not conceding the correctness of the Examiner's position, in the interest of advancing prosecution, Applicants have canceled those claims reciting identity percentages. Accordingly, Applicants respectfully request that this rejection be withdrawn.

To the extent that this rejection is maintained over pending claims 19-34 and 39, the following comments are made. The Examiner has specifically stated that the "specification teaches specific amino acid substitutions at amino acid positions 12, 15, 17, 35 and 38 of SEQ ID NO: 2." See O.A. mailed 6/3/03 at p. 3. Independent claim 19 is specifically drawn to an isolated mutant toxin comprising substitutions at amino acid positions 12, 15, 17, 35, or 38 of SEQ ID NO: 2. Accordingly, as recognized by the Examiner, adequate written description exists for claim 19.

Similarly, adequate written description exists for independent claims 20, 22, 24, 29, 32, and 34. Claim 20 is drawn to an isolated mutant toxin comprising a substitution at position 12 of SEQ ID NO: 2. Position 12 is a position recognized by the Examiner as being taught by the specification. Claim 22 is drawn to an isolated mutant toxin comprising a substitution at position 38 of SEQ ID NO: 2. Position 38 is a position recognized by the Examiner as being taught by the specification. Claim 24 is drawn to an isolated mutant toxin comprising substitutions at positions 15 and 38 of SEQ ID NO: 2. Positions 15 and 38 are positions recognized by the Examiner as being taught by the specification. Claim 29 is drawn to an isolated mutant toxin comprising substitutions at positions 17 and 38 of SEQ ID NO: 2. Positions 17 and 38 are positions recognized by the Examiner as being taught by the specification. Claim 32 is drawn to an isolated mutant toxin comprising substitutions at positions 15, 35, and 38 of SEQ ID NO: 2. Positions 15, 35, and 38 are positions recognized by the Examiner as being taught by the specification. Claim 34 is drawn to an isolated mutant toxin comprising substitutions at positions 12, 15, 17, 35, or 38 of SEQ ID NO: 2. Positions 12, 15, 17, 35, and 38 are positions recognized by the Examiner as being taught by the specification. Therefore, applicants submit that adequate written description exists for independent claims 20, 22, 24, 29, 32, and 34. Likewise, adequate written description exists for dependent claims 21, 23, 25-28, 30-31, 33, and 39.

35 U.S.C. § 112, second paragraph

Claims 1, 4-10 and 17-92 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully traverse this rejection.

While not conceding the correctness of the Examiner's position, in the interest of advancing prosecution, Applicants have canceled claims 1, 4, and 5 without prejudice. The Examiner stated that "it is unclear if these amino acids refers to the amino acids comprised in SEQ ID NO:2 or are limited to only the specifically named amino acid substitutions" (emphasis added). In response, Applicants have also amended claim 34 to recite "or at up to three of these specifically named amino acids" to make it clear that it refers to the specifically named amino acid substitutions. Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. § 101

Claims 1, 4-10 and 17-92 were rejected under 35 U.S.C. § 101, as drawn to a product of nature. Applicants respectfully traverse this rejection.

While not conceding the correctness of the Examiner's position, in the interest of advancing prosecution, Applicants have canceled claims 1, 4-10, 17-18, 35-38, and 40-92 without prejudice and amended claims 19-34 and 39 to recite the term "isolated." Applicants respectfully request that this rejection be withdrawn.

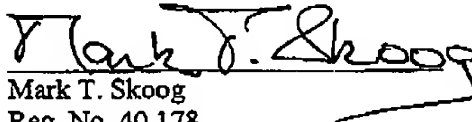
Summary

In summary, Applicants submit that each of claims 19-34 and 39 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,
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Date:

Nov 25, 2003


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